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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,543	02/07/2001	Glenn R. Godley	1033	5035
33055 7590 02/07/2012 PATENT, COPYRIGHT & TRADEMARK LAW GROUP 4199 Kinross Lakes Parkway Suite 275 RICHFIELD, OH 44286				
EXAMINER				
GISHNOCK, NIKOLAI A				
ART UNIT		PAPER NUMBER		
3715				
MAIL DATE		DELIVERY MODE		
02/07/2012		PAPER		

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1 UNITED STATES PATENT AND TRADEMARK OFFICE
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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* GLENN R. GODLEY
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11 Appeal 2010-008083
12 Application 09/778,543
13 Technology Center 3700
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17 Before ANTON W. FETTING, BIBHU R. MOHANTY, and
18 MICHAEL W. KIM, *Administrative Patent Judges*.
19 FETTING, *Administrative Patent Judge*.

20 DECISION ON APPEAL

STATEMENT OF THE CASE¹

Glenn R. Godley (Appellant) seeks review under 35 U.S.C. § 134 (2002) of a non-final rejection of claims 1, 2, 4-16, 18, and 19, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellant invented a way of teaching subjects such as animals and children to vocally emulate prerecorded sounds (Specification 1:5-6).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

1. An apparatus to teach a subject to vocally emulate sounds comprising:

[1] a presence detecting sensor

for detecting the presence of a subject;

[2] a system for playing back a predetermined message,

wherein said system initiates playback of said predetermined message

upon detection of the presence of said subject

by said presence detecting sensor;

and

¹ Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed May 15, 2009) and the Examiner's Answer ("Ans.," mailed August 18, 2009).

1 [3] a housing
2 which contains
3 said sensor
4 and
5 said playback initiation system .

6 The Examiner relies upon the following prior art:

Hicks	US 3,847,120	Nov. 12, 1974
Lynch	US 5,568,792	Oct. 29, 1996
Yu	US 5,726,629	Mar. 10, 1998
Green	US 6,354,244 B1	Mar. 12, 2002

7 Claims 1, 2, 4, 5, 9, 11, 12, 18, and 19 stand rejected under 35 U.S.C.
8 § 102(b) as anticipated by Hicks.

9 Claims 1, 4, 5, 8, and 19 stand rejected under 35 U.S.C. § 102(b) as
10 anticipated by Yu.

11 Claim 2 stands rejected under 35 U.S.C. § 103(a) as unpatentable over
12 Hicks and Lynch.

13 Claims 6-8 stand rejected under 35 U.S.C. § 103(a) as unpatentable over
14 Hicks and Yu.

15 Claims 10 and 13-16 stand rejected under 35 U.S.C. § 103(a) as
16 unpatentable over Hicks and Green.

ISSUES

The issues of anticipation and obviousness turn primarily on whether the claimed presence detector is sufficiently broad to encompass the detectors in the applied art.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Hicks

01. Hicks is directed to a device for training birds to talk that includes a recording playback unit that repeats spoken sounds. Hicks 1:49-51.

02. Hicks has a playback unit that particularly encourages the bird to learn to speak and is automatically operated when the bird is attracted by his full-size reflection in a mirror mounted on the device. Hicks 1:52-56.

03. Hicks has a housing having a front side panel having full-size mirror that may be removable to expose the inside components and for changing of a record. Hicks 2:55-60.

04. Hicks includes a perch adjacent the rear of the device. One side of the perch cooperates with a microswitch by a lever. When a bird flies up and alights on the perch, this switching action activates the tape playback unit and causes sounds to emerge from a speaker. Hicks 2:61 – 3:10.

Yu

05. Yu is directed to an electrical illumination and sound device using a lighting fixture with motion detector connected to an announcement device for indoor or outdoor uses. When something enters an area and is detected by the motion detector, the motion detector causes the lighting fixture to turn on and the announcement device to playback an announcement or a message. Yu 1:33-54.

06. Yu uses an infrared heat sensor for detection. Yu 2:26-34.

Lynch

07. Lynch is directed to a bird training device training a bird to repeat words. Lynch 1:5-6.

08. Lynch describes a selector switch for selecting record or playback mode. Lynch 5:13-20. Recording a sound inherently chooses the sound that is recorded.

Green

09. Green is directed to outdoor accessories such as bird feeders for displaying accessories such as bird houses. Green 1:11-14.

10. Green has a filing date of September 16, 1999.

ANALYSIS

Claims 1, 2, 4, 5, 9, 11, 12, 18, and 19 rejected under 35 U.S.C. § 102(b) as anticipated by Hicks.

We are not persuaded by the Appellant's argument that what is disclosed in Hicks is not a sensor but a mechanical lever sensitive to the weight of a bird. Appeal Br. 9. Hicks uses a lever that senses a presence by being pivoted by the bird's weight. FF 04. Appellant provides no lexicographic definition of sensor other than it be presence detecting.

We are not persuaded by the Appellant's argument that claims 9 and 10 are separately patentable because the perch is detachable. These claims recite a perch that is detachable. Appellant contends that the perch terminates the presence sensing mechanism when detached. This argument is not commensurate with the scope of the claim, as the claim is a structural one merely reciting the presence detector without specifying that it must operate at all times. Hicks' lever is operable when the perch is attached.

Claims 1, 4, 5, 8, and 19 rejected under 35 U.S.C. § 102(b) as anticipated by Yu.

We are not persuaded by the Appellant's argument that the claims are toward a presence detector and initiation of playback of the prerecorded message based on the presence of an object; and that motion is distinct from presence, as the mere presence of an object in an area would not necessarily trigger the motion detector. Appeal Br. 10. Clearly if an object creates motion, it is present. Thus, its presence is detected. The claim does not narrow the aspects of presence that are appreciated by the detector. Any

1 technology that detects that something is present is within the scope of the
2 claim.

3
4 *Claim 2 rejected under 35 U.S.C. § 103(a) as unpatentable over Hicks and*
5 *Lynch.*

6 We are not persuaded by the Appellant's argument that Hicks fails to
7 describe the claimed selector switch for choosing a desired prerecorded
8 sound . Appeal Br. 15. The Examiner applies Lynch for this limitation.

9 *Claims 6-8 rejected under 35 U.S.C. § 103(a) as unpatentable over Hicks*
10 *and Yu.*

11 We are not persuaded by the Appellant's argument that Hicks fails to
12 describe different detecting sensors, one having a light sensing device, one
13 having a laser and laser detect ion sensor, and one having a heat sensing
14 device, respectively. Appeal Br. 16. The Examiner applied Yu and official
15 notice for these limitations. Yu explicitly describes the claimed heat and
16 light sensors as Yu describes detecting infrared light and heat, and the
17 Examiner found that those of ordinary skill knew that a laser detector was a
18 predictable alternative.

19 *Claims 10 and 13-16 rejected under 35 U.S.C. § 103(a) as unpatentable*
20 *over Hicks and Green.*

21 We are not persuaded by the Appellant's argument that Green has an
22 issue date of March 12, 2002, subsequent to the instant application filing
23 date of February 7, 2001 and is non-analogous art. Appeal Br. 17. Green

has a filing date of September 16, 1999. Green is directed toward displaying devices for attracting birds such as those trained by Hicks.

CONCLUSIONS OF LAW

The rejection of claims 1, 2, 4, 5, 9, 11, 12, 18, and 19 under 35 U.S.C. § 102(b) as anticipated by Hicks is proper.

The rejection of claims 1, 4, 5, 8, and 19 under 35 U.S.C. § 102(b) as anticipated by Yu is proper.

The rejection of claim 2 under 35 U.S.C. § 103(a) as unpatentable over Hicks and Lynch is proper.

The rejection of claims 6-8 under 35 U.S.C. § 103(a) as unpatentable over Hicks and Yu is proper.

The rejection of claims 10 and 13-16 under 35 U.S.C. § 103(a) as unpatentable over Hicks and Green is proper.

DECISION

The rejection of claims 1, 2, 4-16, 18, and 19 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

1

2 JRG